

Manatee Protection Plan Review Committee (MPPRC)
Minutes of August 17, 2009 Meeting

Committee Attendees: Brett Bibeau; Richard Bunnell; T. Spencer Crowley III; Judith Futerfas; David Gardner; Lynda Green; Alberto Lamadrid; Mark Lewis; Kate Mansfield, Ph.D; Robert Moser; Manny Prieguez (Chair); Dick Townsend (Vice Chair); Julia Zaias, Ph.D.

County Staff Attendees: Lee Hefty (DERM); Susan Markley, Ph.D. (DERM); Craig Grossenbacher (DERM); Molly Messer (DERM); Matt Davis (DERM); Lisa Spadafina (DERM); Forrest Shaw (DERM); Sheri Kempinski (DERM); India Pascullis (DERM); Kevin Asher (MD Park & Recreation)

Other Attendees: A sign in sheet was provided for public sign in.

1. Welcome, Introductions, and Review of Agenda:

A quorum was established. The meeting was called to order by Chair Manny Prieguez at 12:09 P.M. The meeting was recorded on video.

2. Review and Discussion of Committee Suggestions:

Chair Prieguez started the meeting by stating that they were going to continue discussing the issue of slip transfers. Ms. Green requested to make a motion, however Chair Prieguez wanted to continue discussions before allowing any motions. At the request of Dr. Zaias, Chair Prieguez gave a brief review of the last meeting.

Mr. Bibeau stated that he would like to provide a revised version of the document with the proposed language related to his motion from the July 29, 2009 meeting which failed. He stated that he accidentally forgot to remove the language "or its tributaries/canals" from the language that he cut and pasted from a DERM document. Mr. Bibeau clarified that the intent of the motion was to excluded tributaries and canals outside of the Miami River federal channel and that he thought that the document passed out at the last meeting was consistent with that. He requested to pass out a revised version of the language, which he explained had 4 references to tributaries and canals removed to be consistent with the intent of his motion. Chair Prieguez allowed him to pass out the document, but requested that any motions and votes be held until the committee has the opportunity to continue the discussion.

At the request of the Chair, Dr. Markley provided a review of the DERM proposal for slip transfer language and how it was derived. She stated that one key component is that because the slip transfer would be based on mitigation, once the slips are transferred, they cannot be transferred again and covenants would be required. Dr. Markley stated that there have not been any changes to the original document; however, in response to concerns about distance of transfers, DERM may consider other options. She also explained that there is no need to transfer slips between areas where there are no restrictions, because there are no restrictions limiting the number of slips. She further stated that although there is nothing specific in the MPP about slip transfers, but the State has informed the committee that they are not willing to approve slip transfers.

The committee discussed the issue of transferring slips into Essential Manatee Habitat areas from areas outside of Essential Manatee habitat. At the end of the discussion, Dr. Zaias stated that if a motion as was discussed were made, that it should include language that indications

that the maps showing Essential Manatee Habitat would be updated. After a brief discussion of this concept, Dr. Zaias made a motion related transfer of slips as follows.

First Motion

Motion Made by: Dr. Julia Zaias

Seconded by: Lynda Green

“That there is absolutely no transfer of any slips of any kind from non-essential manatee habitat into any essential manatee habitat; at the most recent update of what those maps would be I guess, into the 2009 version of that essential habitat, you know, assuming that it is similar, but it will look sort of like this.”

A brief discussion occurred related to the updating of the maps and other concerns that some members had about specifics. The Chair clarified that the vote is only on a very general idea and that DERM staff would come up with specific language based on the motion at the next meeting.

The motion **passed** with the votes as follows:

Brett Bibeau	Yes	Richard Bunnell	Absent
T. Spencer Crowley, III	No	Judith Futerfas	No
David Gardner	Yes	Lynda Green	Yes
Bob Karl	Absent	Alberto Lamadrid	Yes
Mark Lewis	Yes	Kate Mansfield, PhD	Yes
Robert Moser	Yes	Manny Prieguez, Chair	Yes
Richard Townsend, Vice Chair	Yes	Julia Zaias, PhD	Yes

The Chair then introduced the concept of transferring slips from one waterway in Essential Manatee Habitat to another waterway in Essential Manatee Habitat. A discussion ensued among the committee members about this topic.

Dr. Markley explained that DERM would not support the transfer of slips between waterways in Essential Manatee Habitat. She then explained the basis of DERM's position and the inability to determine the value of such transfers as a form of mitigation based on different factors such as the number of manatees, their typical behaviors in that area, amount of vessel traffic, as well as other factors. Mark Lewis then made a motion relating to this topic as follows.

Second Motion

Motion made by: Mark Lewis

Motion seconded by: Alberto Lamadrid

“...that staff prepare text for final consideration at the next meeting that says, in appropriate terminology, that slip transfers from one water basin to another water basin will not be permitted as part of this Manatee Protection Plan...within Essential Manatee Habitat.”

Mark Lewis clarified in response to a question about the definition of “water basin” by Julia Zaias. “In my mind, water basin is everything from where it enters the bay until it dries up, upstream.”

The motion **passed** with the votes as follows:

Brett Bibeau	Yes	Richard Bunnell	Absent
T. Spencer Crowley, III	No	Judith Futerfas	No
David Gardner	Yes	Lynda Green	Yes
Bob Karl	Absent	Alberto Lamadrid	Yes
Mark Lewis	Yes	Kate Mansfield, PhD	Yes
Robert Moser	Yes	Manny Prieguez, Chair	Yes
Richard Townsend, Vice Chair	Yes	Julia Zaia, PhD	No

After a brief break, the Chair opened the floor to discussion about transfers within basins or waterways. Dr. Zaia requested that the committee discuss on the definition of "Existing Facility" before moving forward with the discussion of slip transfers because she thought it was relevant to transfers. She stated that although there is already a definition in the MPP, she thinks that it needs to be more restrictive based on the length of time allowed for something to be considered existing (i.e. Oct 1984 date). She stated that she was in favor of a rolling date of 5 years and wanted to discuss this.

The Chair recognized her request and opened discussion about the definition of "Existing Facility" for the purposes of slip transfers. After a discussion between several committee members, the Chair and Dr. Zaia, the Chair decided to move forward with the discussion of slip transfers without defining "Existing Facility" because the definition of Existing Facility encompasses the broader issues in the plan than just transfer of slips.

Mr. Bibeau requested that he be allowed to propose specific language that included a definition of existing facility. Mr. Bibeau stated that he had 2 motions.

Mr. Bibeau explained that he had mistakenly included language which included references to the Miami River and its tributaries and canals. He provided the committee with a revised version of the document with all references to tributaries and canals were removed. Mr. Bibeau stated that he intended to make a motion concerning this revised document but decided against it because of concerns raised by another committee member about the definition of "existing" slips.

Mr. Bibeau then passed out a second document and explained that this proposal was based on the DERM proposed slip transfer language and criteria on pages 3 & 4 of the DERM document; however, he had made several changes & deletions as follows:

1. The language was changed to address slips transfers on the Miami River only, as opposed to the entire county as was proposed by DERM.
2. The limitation on the distance between donor and recipient sites in Biscayne Bay was removed because his proposed language only was for the Miami River.
3. Mr. Bibeau removed the portion of the DERM proposal which only allowed downstream transfers.
4. Mr. Bibeau's proposal eliminated number 2 in the DERM document which required the type and frequency of vessel use to be consistent between the donor and recipient sites.
5. Number 7 of Mr. Bibeau's proposal, corresponding to number 8 of the DERM proposal, was modified to require that all federal, local and state approvals be obtained for the proposed work and operations only at the recipient site.

After his explanation of these changes, Mr. Bibeau made a motion as follows:

Third Motion

Motion Made by: Brett Bibeau

Motion Seconded by: Alberto Lamadrid

"So, I move the, starting on page 3 of the document just handed out, I would ask staff ...I sent around 20 copies, if the extras could please go to the public. So, I would move that all of the new language, 100% authored by DERM with a couple deletions and the part about, we're only talking about River to River, that everything in quotes...the other part that I changed from DERM is that we're only talking from the Miami River to the Miami River...it's the language that is in quotes and underlined that would be new text that we would recommend the Board of County Commissioners include in the Manatee Protection Plan consistent with the previously adopted Board of County Commission Resolution 536-05, which calls for allowing abandoned and ...unused slips, which could be permitted today if that site wanted to, but if they don't allowing them to move a limited distance within the same federal navigable channel. So, that is my motion Mr. Chairman."

"g.(2) Removal of Slips or Berths in Use at a Location and Transfer to Another
Removal of dry or wet slips or berths in use at one or more locations along the Miami River may
serve as a form of mitigation to compensate for the potential impacts to manatees from proposed new
operations or expansion of marine facilities in the Miami River above the guidelines recommended
for manatee protection. The transfer process requires a review and evaluation by DERM, in
coordination with state and federal regulatory authorities, of the proposed transfer for potential
adverse impacts to manatees as well as evaluation of other requirements of Chapter 24 of the Code of
Miami-Dade County. To assure that the impacts from proposed new slips would not exceed the
potential impacts from the slips that are to be removed for mitigation, this analysis must be site
specific and be based on a consistent set of mitigation rules applied to all such projects. Furthermore,
to assure that the impact of new powerboat slips remains fully mitigated, a suitable restriction
running with the land (i.e. restrictive covenant) on the donor property is required to record that the
historical use was transferred, and assure that the original slips would never be reoccupied by
powerboats. This is similar to other forms of environmental mitigation, or conservation easements,
intended to preserve the mitigation benefits in perpetuity. Transfer applications shall not be approved
without concurrence of federal and state regulatory agencies with authority for manatee protection.
This has implications for the owners or future owners of donor properties. These owners have an
expectation that continuing use or reconstruction of historical motor boat slips will be found
consistent with manatee protection guidelines. This would no longer be the case if the historical use
had been transferred to another parcel. For these reasons, both from an assessment of the biological
merits of the mitigation for a proposed project, and in fairness to owners whose slips are sought for
transfer, slips cannot simply be "reallocated" to another property without participation and consent of
the "donor".

The following mitigation criteria will be used to evaluate requests for slip transfer.

1. Slip transfers only have the ability to offset potential impacts if they represent an actual reduction in use of equivalent slips at the donor site, and the slips from the donor site may not be reoccupied.
2. To assure no net increase in impact to manatees, slips may only be transferred from one site to another along the 5.5 mile Miami River.
3. Only slips in compliance with all required environmental and land use approvals are eligible for transfer. For slips located in or over the water, documentation of approval of the submerged lands owner is required. Illegal or unauthorized docking is ineligible for transfer.
4. Transfers require the consent of the property owner(s) involved (donor and receiving properties) and restrictive covenants running with the land in favor of Miami-Dade County must be recorded on the donor and recipient sites.
5. In order to preserve riparian property rights and to prevent net reduction of waterfront access sites, not all existing slips can be transferred away from a given donor site. At least one existing power boat slip per 100 feet of shoreline shall be retained at the donor site and shall not be eligible for transfer.
6. Slips located in areas recommended for expansion of commercial marinas, dry storage, transitory docks, boatyards, ramps, or large vessel (>100') berthing under the MPP do not qualify as donor slips.
7. Slip transfers may be allowed only if all federal, state, and local approvals at the receiving site are obtained for the proposed work and operations required for transfer."

At the request for clarification by a committee member about dry slips versus wet slips, Mr. Bibeau stated,

"My understanding is that if a site is allowed 10 slips, those 10 slips can be on the land and they can have zero boats in the water...so, my understanding is that of the 10 slips they could theoretically be none in the water and all on the land. So they count slips, regardless if it's in the water (wet) or on the land (dry) they count them the same. So what we're saying is that if it's a legal slip then it doesn't matter, just the same as it doesn't matter elsewhere, if the boat is in the water legally or on the land legally, they can be transferred. So if a site has 10 slips, but they choose to put none in the water, they choose to put all 10 on the land...well, you can't transfer all 10, cause you have to leave one behind, so you can only transfer 9 of 10 to another site cause one has to be left behind."

Dr. Markley explained that there is no distinction from a manatee perspective whether a boat is stored either dry or wet. The concern is the coming and going of the vessels regardless of where they are stored.

A committee member requested that the motion be tabled until the next meeting, to allow time for the committee to read through the document before voting.

The **motion was tabled** until the next meeting when Mr. Bibeau agreed with the request of the committee member.

Some discussion about the motion continued. The Chair and Mr. Crowley expressed concern that the motion only addresses transfers on the Miami River and that slip transfers should encompass other areas as well.

Mr. Lewis expressed concern about several concepts that are not included in Mr. Bibeau's proposal such as specific mitigation language, requirements for down-river transfers only, currently used or occupied slips and no discussion of new slips having similar or lesser impact on manatees based on vessel type, size or frequency of use. He further expressed a concern that transfers under this proposal could be approved that could potentially have a greater impact to manatees.

Dr. Markley clarified that Mr. Bibeau's proposal does not include the items that deal with mitigation and ensuring that the donor and recipient sites have similar uses to reduce potential impacts to manatees. She further indicated that Mr. Bibeau's proposal allows for upstream transfers, thereby increasing the potential impacts to manatees by increased travel distance through essential habitat and by potentially impacting manatee aggregation areas that exist farther up the Miami River, especially in the winter.

3. Public Comment:

Ed Swakon, President of the Miami Marine Council, provided the committee with a revised proposal for slip transfer methodology. He explained that the revised proposal is based on some of his original proposals, but also takes into consideration concepts in the proposals made by DERM, Mark Lewis and concepts that he thought the committee had come to a consensus about. He opined that the second resolution that was approved by the committee during the meeting was problematic because it would prohibit slip transfers between basins. He opined that based on that prohibition the committee was missing an opportunity to look at situations that could potentially decrease impacts to manatees. He encouraged the committee to not put a blanket prohibition on slip transfers. He recommended that the committee request DERM staff to come back with language not only dealing with the adopted resolution prohibiting inter-basin transfers, but also to craft language that would contemplate the possibility of inter-basin transfers with specific criteria. Related to the committee's discussion of historic slips, he stated that slips that are occupied are not likely to be available for transfer. Finally, Mr. Swakon requested that the committee allow for two public comment periods during future meetings (one in the beginning and one at the end) to allow for public participation and suggestions before votes are taken.

4. Review of Future Schedule:

The committee reviewed the future meeting dates scheduled in the July 29, 2009 meeting. They are listed below:

**August 24, 2009 from 1:00 PM to 4:00 PM,
September 9, 2009 from 1:00 PM to 4:00 PM
September 23, 2009 from 1:00 PM to 4:00 PM**

After confirming that those meeting dates were acceptable to the committee members, the Chair requested that they schedule all of the future meetings until the sunset date of the committee. A committee member asked what the final sunset date of the committee was. In response, Dr. Markley informed them that the final day of the committee's existence was on October 11, 2009, which was the Columbus Day holiday. As a result, the last day that they could meet would be on Friday, October 9, 2009. Based on this information, the following future meeting dates were scheduled:

October 2, 2009 from 12:00 PM to 4:00 PM

October 9, 2009 from 12:00 PM to 4:00 PM

The Chair told the committee members that any new items brought up on the October 9, 2009 meeting would be strongly discouraged and that the purpose of the meeting would be only to finalize the recommendations.

Prior to adjournment, Dr. Markley informed the committee that DERM had provided a supplement to the previously distributed data summary report. The supplement was related to law enforcement data that had been provided by the Florida Fish & Wildlife Conservation Commission (FWCC) and included information on boat accidents and locations where the most accidents occur.

The meeting adjourned at 3:15 P.M.